

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL D. WILSON, §
§
VS. § CIVIL ACTION NO. 4:18-CV-946-O(BJ)
§
UNKNOWN §

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

In this case, Plaintiff has filed a civil case with a motion for leave to proceed in forma pauperis. Resolution of the motion was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b) and Miscellaneous Order No. 6.¹ The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is a new civil action.

B. PARTIES

Michael D. Wilson is the plaintiff. At this time he has listed the defendant as "Unknown."

C. LEGAL ANALYSIS

Plaintiff filed a completed long-form motion to proceed in forma pauperis under 28 U.S.C. § 1915 *et. seq.* That application/motion includes the income and asset information for the plaintiff. A review of the financial information submitted in the long-form application/motion reflects that plaintiff Wilson receives \$2,906.83 a month in Department of Veterans Affairs service-connected disability payments. Courts consistently consider disability type benefit payments in making the in-

¹Order for the Adoption of Rules for the Exercise of Powers and Performances of duties by United States Magistrate Judges, signed May 5, 2005.

forma-pauperis determination.² He lists no dependents. The applicable poverty guideline for a family of one is \$12,140.³ At \$2,906.83 per month, Plaintiff receives over \$34,000 in annual income, almost three times the poverty level. The information in this application thus shows that Plaintiff has sufficient resources available to pay the applicable fees. Thus, after review and consideration of the application/motion to proceed in forma pauperis, the undersigned finds the motion to proceed IFP should be denied, and will make such a recommendation.

RECOMMENDATION

It is therefore **RECOMMENDED** that Plaintiff's motion to proceed in forma pauperis [docket no. 2] be **DENIED** by the district judge.

It is further **RECOMMENDED** that the district judge inform Plaintiff that the complaint will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless Plaintiff pays to the clerk of Court the filing and administrative fees of \$400.00⁴ within seven (7) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT

²See, e.g., *Dow v. Colvin*, No. 4:13-cv-299, 2013 WL 1952092, at *1 (N.D. Tex. April 15, 2013), *rep. and rec. adopted*, (N.D. Tex. May 23, 2013)(considering monthly Veterans Administration disability payments in denying motion to proceed in forma pauperis); *Hightower v. Arnold*, No. 4:07-cv-087-JLH, 2007 WL 1668658, at * 1-2 (E.D. Ark. June 8, 2007) (considering Veteran's Administration service-connected disability and social security disability benefits totaling \$776.00 in denying motion to proceed in forma pauperis); *Still v. Shinseki*, 490 F. App'x 413, 414 (3rd Cir 2012)(considering disability payments in reviewing the IFP application); *Wojtczak v. United States*, No. 12-449-C, 2012 WL 4903025, at *1 (Fed. Cl. 2012) (same).

³See <https://aspe.hhs.gov/poverty-guidelines>.

⁴In addition to the filing fee of \$350, the District Court Miscellaneous Fee Schedule, effective May 1, 2013, requires payment of an administrative fee for filing a civil action in district court of \$50. See 28 U.S.C. § 1914(a) and District Court Miscellaneous Fee Schedule, note 14.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a de novo determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. See 28 U.S.C. § 636(b)(1). Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. See *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), superseded by statute 28 U.S.C. § 636(b)(1) (extending the deadline to file objections from ten to fourteen days).

ORDER

Under 28 U.S.C. § 636, it is **ORDERED** that Plaintiff is granted until December 13, 2018 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and is hereby, RETURNED to the docket of the United States District Judge.

SIGNED November 29, 2018.



JEFFREY L CURETON
UNITED STATES MAGISTRATE JUDGE